



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

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David B. Cohen
Mayor

DATE: June 22, 2007

TO: Ald. Brian E. Yates, Chairman, and
Members of the Zoning and Planning Committee

FROM: Michael Kruse, Director of Planning and Development
Juris Alksnitis, Chief Zoning Code Official
Alexandra Ananth, Planner

SUBJECT: **Update for Working Session** on Petition # 66-07 of NEW ENGLAND DEVELOPMENT proposing to amend the Newton Zoning Ordinance Section 30-15 by adding a new subsection entitled **Planned Business Development (PBD)** relative to the mixed use and design of large tracts of land in certain business districts and requirements to meet certain minimum criteria, including acreage and FAR, in turn for eligibility for certain density/dimensional bonuses and exceptions.

CC: Mayor David B. Cohen
Planning and Development Board
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee
Board of Aldermen

Recommendation: Conduct final review for adoption of text amendment to the Zoning Ordinance..

The purpose of this memorandum is to provide the Zoning and Planning Committee and the public with an update on Petition #66-07, as directed at your June 11 Committee Working Session.

I. BACKGROUND

The Zoning and Planning Committee and the Planning and Development Board initially heard the subject petition at their joint March 26, 2007 meeting. The hearing was kept open in order to allow the petitioner time to address issues mentioned in a previous Planning Department memorandum, as well as to respond to concerns raised at the public hearing. The petitioner subsequently provided a revised draft of the proposed Zoning Ordinance text amendment, discussed at a continuation of the public hearing on April 23, 2007, which was closed that evening. Subsequently, the Planning Department provided a memorandum to the Committee to facilitate discussion of key issues at its working session on June 11, 2007. Input obtained from the Planning and Development Board at its June 4, 2007 meeting was included in the memorandum. Enclosed is a revised draft text amendment (*See ATTACHMENT A – Proposed Business Development Ordinance*), which is hereby transmitted both to the Zoning and Planning Committee and the Planning and Development Board.

The revised draft text amendment, reviewed by the Law Department, seeks to reflect the progress of deliberations to date as well as to simplify the language and more nearly meet the existing format of the Zoning Ordinance. It is noted that the 90-day action period from the date of the close of the public hearing expires July 22, 2007. In the event the Board does not take final action on the subject petition by this date, the item would need to be re-advertised and a new public hearing held.

II. NEXT STEPS

The Planning Department continues to support the concept of a Planned Business Development text amendment and would suggest that *the Committee should give careful attention to the enclosed draft text amendment and consider whether any further revisions may be appropriate*. As proposed, this text amendment would allow a Planned Business Development by special permit in existing Business 4 and 5 Districts, or areas rezoned to BU-4 and 5 in the future.

Recommendation: Conduct final review for adoption of text amendment to the Zoning Ordinance.

ATTACHMENTS

Attachment A: Proposed Planned Business Development Ordinance

DRAFT – for discussion purposes

Proposed Planned Business Development Ordinance

1. *The following Section 30-15(s) is added:*

Section 30-15(s) *Planned Business Development (“PBD”).* In any Business 4 or Business 5 District, the Board of Aldermen may give site plan approval in accordance with the procedures provided in Section 30-23, and may grant a special permit in accordance with the procedures provided in Section 30-24, for the applicable density and dimensional controls set out in Table A of this subsection for a Planned Business Development.

- 1) *Purpose:* A Planned Business Development is one which allows development appropriate to the site and its surroundings that provides enhancements to infrastructure, protection of nearby neighborhoods, and a mix of commercial and residential uses otherwise unavailable in a single business district, and is not inconsistent with the City’s Comprehensive Plan, as currently adopted or as may be adopted in the future.
- 2) *Minimum Criteria for Planned Business Districts.* In order to be eligible for any approval under this Section, a PBD must meet the following threshold criteria:
 - (a) The Development Parcel shall be located in a Business 4 District and/or Business 5 District;
 - (b) The PBD shall comply with the applicable density and dimensional controls set out in Table A of this subsection;
 - (c) The PBD shall include a mix of commercial and residential uses and shall comply with the provisions set forth in Section 30-24(f); and
 - (d) If the PDB includes a mix of commercial and residential uses and includes shared parking facilities, the provisions of Section 30-19(d) shall apply, provided that in no event shall the required parking for residential units be less than 1.25 per dwelling unit.
- 3) In addition to those criteria set forth in Section 30-23(c)(2) and in Section 30-24(d), the Board of Aldermen shall consider the application in light of the following criteria:
 - (a) Transportation, utilities, schools, and other public facilities and infrastructure serve the project adequately and safely without material deterioration in service to other locations;
 - (b) Mitigation measures have been included to address any material adverse impacts on the surrounding neighborhood resulting from construction, traffic, parking, noise, lighting, blocked views, and other impacts associated with the PBD;
 - (c) Long term public benefits to the City and neighborhoods and villages surrounding the project and adjacent municipalities are served that address affordable housing needs, substantial traffic and roadway enhancements, improved access and enhancements to public transportation, and water and sewer infrastructures enhancements;

- (d) Scale, density, and mix of commercial and residential uses have been designed with reference to the existing and proposed character and land uses in the surrounding neighborhoods, the City's Comprehensive Plan (as amended from time to time), and Massachusetts General Laws, Chapter 40A, Section 9;
- (e) Pedestrian and vehicular relationships and access routes are designed between the PBD and abutting parcels and streets as appropriate, with consideration to streetscape continuity and an intent to avoid adverse impacts on surrounding neighborhoods from such traffic and other activities generated by the PBD; and
- (f) Appropriate setbacks as well as buffering and screening are provided from nearby residential properties; the quality and access of beneficial open space and recreation opportunities is appropriate for the number of residences, employees and customers of the PBD; and the extent of the conservation of natural features on-site.

Insert Table "A"

Table A

Draft 6/21/07

Density and Dimensional Requirements for Planned Business Developments Pursuant to Section 30-15(s)

									Minimum Setbacks (6)		
Zoning District	Min. Lot Area	Min. Frontage	Max. # of Stories (1)	Max. Building Height (2),(3)	Max. Total Floor Area Ratio	Min. Lot Area per Res. Unit	Max. Lot Coverage	Min. Beneficial Open Space	Front (4)	Side (5)	Rear(5)
<i>Business 4</i>	10 acres	100 ft.	8	96 ft.	3.0	1,200 sq. ft.	n/a	20% if GFA is < 500,000 sq. ft. 30% if GFA is > 500,000 sq. ft.	Greater of 15 ft. or 1/2 build. height	Greater of 15 ft. or 1/2 build. height	Greater of 15 ft. or 1/2 build. height
<i>Business 5</i>	10 acres	100 ft.	8	96 ft.	3.0	1,500 sq. ft.	n/a	20% if GFA is < 500,000 sq. ft. 30% if GFA is > 500,000 sq. ft.	Greater of 15 ft. or 1/2 build. height	Greater of 15 ft. or 1/2 build. height	Greater of 15 ft. or 1/2 build. height

Notes:

- (1) Number of stories may be increased up to a maximum of 14 stories, subject to grant of Special Permit by the Board of Aldermen and subject to such height limits as established in Footnotes 2 and 3, following.
- (2) Building height may be increased up to a maximum of 168 ft., subject to grant of Special Permit by the Board of Aldermen, provided the building is placed a minimum of 100 ft. from the front and rear lot lines, and provided the height does not exceed such total height as calculated by allowing one foot of building height for each 1.5 ft. of separation measured from the front lot line or the rear lot line, whichever is less.
- (3) Any increase in building height requested pursuant to Fn. 2 may not exceed by more than 5% the height of the tallest building located within 2000 ft. of the Development Parcel.
- (4) The front setback may be decreased to a minimum setback equal to the greater of 15 ft. or the average setback in the immediate area, subject to grant of a Special Permit by the Board of Aldermen. The average setback applicable to a Development Parcel shall be the average of the setbacks of the buildings nearest thereto on either side of the Development Parcel. A vacant lot shall be counted as though occupied by a building set back fifteen (15) feet. Buildings exceeding 96 ft. in height must meet the additional requirements of Fn. 2 and 3.
- (5) Side and/or rear setbacks shall be a minimum of 20 ft. when abutting a residential zone or a Public Use zone.
- (6) The front, side, and rear setback requirements for parking facilities in a Development Parcel shall not be less than five (5) feet or, when abutting a residential or a Public Use zone, less than fifteen (15) feet.

- 4) *Lots.* In the application of the requirements of this Ordinance to a Planned Business Development, the same shall not be applied to the individual lots or ownership units comprising a Development Parcel, but shall be applied as if the Development Parcel were a single conforming lot whether or not the Development Parcel is in single or multiple ownership; provided, however, that violation of this Ordinance by an owner or occupant of a single lot or ownership unit or demised premises within a PBD shall not be deemed to be a violation by any other owner or occupant within the PBD. Prior to exercise of a special permit granted under this section, there shall be formed an association, trust or corporation of all owners of lots within the development. Such entity shall serve as the liaison between the City and any lot owner in violation of the City's Zoning Ordinance, shall be the primary contact for the City in connection with any dispute regarding violations of this Ordinance, and shall have legal responsibility for the PBD's compliance with the terms of its special permit and with this Ordinance.
- 5) *Phasing.* Any Planned Business Development may be built in multiple phases over time, in accordance with the terms of the special permit granted.
- 6) *Post-Construction Traffic Study.* A Planned Business Development special permit granted shall provide for an analysis of:
 - (a) Trips generated by and distributed to the PBD site, measured at site driveways, prior to the construction of the PBD;
 - (b) Trips projected by a professional traffic engineering firm to be generated by and distributed to the PBD site by the PBD; and
 - (c) Trips actually generated by and distributed to the PBD one year after a certificate of occupancy is granted, with limitation to impacts caused by PBD, as measured through an independent trip generation and distribution analysis, to be paid for by the developer or successor interest but conducted or overseen by the City.

To the extent that (c) exceeds (b) by ten per cent, the then owner of the Planned Business Development site shall begin mitigation measures within six months, satisfactory to the Director of Planning and Development and the City Traffic Engineer, to reduce the trip generation variance and the trip distribution variance on roadways as specified by the Director of Planning and Development and the City Traffic Engineer to a level within ten percent of (b) within twelve months after the mitigation is begun. Failure to achieve such a reduction within one year after the analysis described in (c) is completed shall require forfeit of a bond in an amount to be determined by the Board of Aldermen and included as a condition of the special permit, which funds shall be used for traffic mitigation by the City.

- 7) *Modifications.* Any material modification to a PBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23. The following provisions shall apply with respect to any proposed modification of a PBD:

- (a) A change of use, provided such change is to another use approved in the Special Permit, or relocation of an approved use within the PBD shall not require additional approvals under this Ordinance if the total Gross Floor Area within the PBD devoted to such use does not increase by more than five percent (5%) in the aggregate;
 - (b) A change of use that results in a lower net parking requirement for the PBD (pursuant to Section 30-19) shall not require additional approvals under this Ordinance; and
 - (c) A change of use or an increase in the floor area or unit count, as applicable, of a use within the PBD shall require Site Plan Approval by the Board of Aldermen in accordance with Section 30-23 unless the applicant demonstrates that the total traffic generation of the PBD, with the proposed change, will not exceed the total traffic generation of the PBD set forth in the applicant's pre-development traffic study.
- 8) *Applicability.* Buildings, structures, lots and uses within or associated with a PBD shall be governed by the applicable regulations for the Business 4 District or the Business 5 District, as applicable, except as modified by the provisions of this section 30-15(s). Where provisions of this Ordinance conflict or are inconsistent with the provisions of this section 30-15(s), the provisions of this section 30-15(s) shall govern.
- 9) *Additional Filing Requirements for PBDs.* In addition to the provisions of Section 30-23 and 30-24, general application requirements for grant of a special permit for a PBD are as follows: Petitioners must submit:
- (a) Scaled massing model or 3D computer model;
 - (b) Narrative analysis describing design features intended to integrate the proposed PBD into the surrounding neighborhood, including the existing landscape, abutting commercial and residential character and other site specific considerations;
 - (c) Statement describing how the beneficial open space areas are intended to be used by the public;
 - (d) Site plans showing any "by-right" alternatives; and
 - (e) Area plan showing distances from proposed buildings or structures on abutting parcels or parcels across public ways, along with information on the heights and number of stories of these buildings and any buildings used for the purposes calculating of a height bonus.

2. Section 30-1 is amended by adding the following two definitions:

Open Space, Beneficial: Areas not covered by buildings or structures, which shall specifically include without limitation: landscaped areas; playgrounds; walkways; plazas, patios, terraces and other hardscaped areas; and recreational areas, and shall not include: (i) walkways intended primarily for circulation, i.e., that do not incorporate landscape features, sculpture or artwork, public benches, bicycle racks, kiosks or other public amenities, or (ii) surface parking facilities, or (iii) areas that are accessory to a single

housing unit or single commercial tenant, and controlled by the owner thereof, and not made available to the general public.

Development Parcel: The real property on which a Planned Business Development is located, as shown on a Planned Business Development Plan approved by the Board of Aldermen in connection with a special permit under Section 30-15(s).

3. Section 30-11(d) is amended by renumbering subparagraph (12) as (13) and adding the following as new subparagraph (12): “In Business District 4, a Planned Business Development;”

4. Section 30-11(i) is amended by renumbering subparagraph (7) as (8) and adding the following as new subparagraph (7): “A Planned Business Development;”